II. REMARKS/ARGUMENTS

A. Summary of Amendments

The application contains 27 claims, numbered 1, 3, 4, 6, 8-20 and 22-31.

Claim 21 has been cancelled by the current amendment.

Claims 2, 5 and 7 remain cancelled.

Claim 20 has been rewritten to include the limitations of claim 21, which has been cancelled.

An amendment has been made to claims 13, 20 and 22 in order to clarify the subject matter being claimed.

The dependency of claim 22 has been amended to reflect the cancellation of claim 21.

No new subject matter has been added to the application under the current amendment.

B. Statements of Rejection and Reply

On page 3 of the Office Action, the Examiner has rejected claims 1, 3-4, 6, 8-17, 10-22, 26-27 and 29-31 under 35 USC 102(e) as being anticipated by US Patent 6,980,515 (hereinafter referred to as Schunk).

Claims 1, 29, 30 and 31

Each of these claims includes common language to the effect of "allocating resources from the pool to satisfy the connection request only if the priority level of the connection request is higher than a pre-determined level".

Now, the Examiner has commented on the Applicant's arguments filed on June 16, 2006 and considers them not to be persuasive. However, based on the Examiner's remarks on page 2 of the Office Action, the Applicant would respectfully suggest that the Examiner may have overlooked a subtle feature of the claims that the Applicant had attempted to bring to light in the previous response dated June 16, 2006.

Specifically, in the response filed on June 16, 2006, the Applicant argued that "[N]owhere in Schunk *et al.* is there provision for allocating a resource to satisfy a connection based on a priority level if the usage level of a resource pool is not below an occupancy threshold". In other words, "...Schunk *et al.* makes no allowance for providing resources required by a connection request if the usage level of a resource pool is not below a usage threshold. In such a situation the connection is ***always*** rejected (column 8, line 66 to column 9, line 2; column 18, lines 8-12) which is ***not*** the case in the claimed invention." [underline in original, ***bold italics*** added.]

The Examiner rejected the Applicant's arguments, stating "Schunk *et al.* in Fig. 13 and the example of col. 15 line 58 to col. 16 line 40 show and recite the access threshold associated 330 with the QoA level 328, i.e. the priority level, whereby if the system resource usage is 50 percent or less, i.e. the occupancy threshold, then Users 1, 2 and 3 remain connected and if the resource utilization exceeds the access threshold 330 corresponding to the user's QoA level 328 then the new connection request is refused clearly anticipates that if the resource utilization is below the access threshold 330 corresponding to the user's QoA level the resources are allocated to satisfy the connection request."

With all due respect, the Examiner's statements seem to suggest a failure to appreciate the fact that the claimed invention allows "allocating resources from the resource pool to satisfy the connection request" even when "the usage level is not below the occupancy threshold". The decision to allocate resources when the usage level is not

below the occupancy threshold is based on whether the priority level of the connection request exceeds a pre-determined level. The existence and *raison d'etre* of a pre-determined [priority] level is fatally absent from Schunk, which prescribes a categorical refusal of a connection request when the usage level is not below the occupancy threshold[1].

To further buttress the Applicant's position, the Examiner is invited to consider the following example. Referring to Figure 13 of Schunk, if the resource utilization is at 80% and a QoA level 2 connection request is received, the request would be refused since the resource utilization is not below the access threshold (which, in Figure 13 of Schunk, corresponds to 75% for a QoA level 2 request). Consider now the claimed invention, and assume that the "pre-determined level" is set to 4. If a priority level 2 connection request is received when the resource usage level is at 80% (*i.e.*, not below the occupancy threshold, which is continuously assumed to be 75%), the connection request would still be granted since the priority level of the connection request (priority level 2) is higher than the per-determined level (set at priority level 4).

It should be appreciated that the above example is not intended to be a limitation of the invention, but merely serves to illustrate (*a*) the absence of a claimed feature (namely, the pre-determined level) in Schunk and (*b*) an inability of Schunk's apparatus to perform the claimed method.

In view of the foregoing, the Applicant respectfully submits that there is at least one limitation of claims 1, 29, 30 and 31 that is not taught or disclosed in Schunk and, as such, the rejection under 35 U.S.C. 102(e) cannot stand. The Examiner is therefore respectfully requested to withdraw the rejection of claims 1, 29, 30 and 31.

Claim 20

Claim 20 is similar to claims 1, 29, 30 and 31 in that it includes language to the effect of "allocating resources from the pool to satisfy the connection request only if the

[1] "If the resource utilization exceeds the access threshold 330 corresponding to the user's QoA level 328, the request is refused" (column 15, line 67 to column 16, line 2) (underline added).

priority level of the connection request is higher than a pre-determined level". Thus, the above arguments apply, and are sufficient to show that there is at least one limitation of claim 20 that is not taught or disclosed in Schunk and, as such, that the rejection under 35 U.S.C. 102(e) cannot stand.

In addition, the Applicant respectfully submits that Schunk neither teaches nor suggests "a multi-service gateway [with] a pool of port processing software entities (PPSEs), ***each*** PPSE having sufficient capacity to provide processing for ***any*** of the packet-switched ports" (***bold italics*** added). Rather, Schunk discloses a multi-service network switch system architecture where "each slot on the switch preferably accommodates a single interface module (a card), referred to as a forwarding module (FM) 10. Each FM 10 preferably includes the on-board intelligence, route forwarding, and route processing information for distributed packet forwarding" (column 3, lines 39-48). As such, the use of a pool of port processing resources, shared by all ports of the multi-service gateway, is fatally absent from Schunk

For this additional reason, it is respectfully submitted that there is at least one limitation of claim 20 that is not taught or disclosed in Schunk and, as such, that the rejection under 35 U.S.C. 102(e) cannot stand. The Examiner is therefore respectfully requested to withdraw the rejection of claim 20.

Claims 3-4, 6, 8-17, 10-19, 22 and 26-27

Claims 3-4, 6, 8-17, 10-19, 22 and 26-27 depend directly or indirectly from independent claim 1 or independent claim 20, and as such incorporate by reference all the limitations contained therein, including the limitation which has been shown above to be absent from Schunk. Accordingly, for the same reasons as those presented above with respect to independent claim 1, the Examiner is respectfully requested to withdraw the rejection of dependent claims 3-4, 6, 8-17, 10-19, 22 and 26-27.

D. Summary of Rejection under 35 USC 103(a) and Response

On page 10 of the Office Action, the Examiner has rejected claims 18, 23-25 and 28 as being obvious in light of Schunk in further view of US patent 6,516,059 (hereinafter referred to as Shaffer).

Claim 18

Claim 18 is dependent on independent claim 1, and as such incorporates by reference all the limitations contained therein, including the limitation already been found to be absent from Schunk (see page 10, above). The Applicant further submits that this limitation is also absent from Shaffer.

Specifically, Shaffer merely discloses a method and system that adaptively assigns call processing to either a centrally accessed unit or a particular telephony device in a network of telephony devices based on the current availability of resources. The centrally accessed unit is assigned to perform each call-related task until a predetermined threshold of processing power is being accessed. Once the predetermined threshold is reached, subsequent requests are assigned to the telephony devices (column 2, lines 59-65). Shaffer neither mentions nor suggests the allocation of resources based on "a priority level of the incoming request" and "a pool occupancy threshold that is a function of the priority level of the connection request", let alone the allocation of resources when the usage level is not below the occupancy threshold "only if the priority level of the connection request is higher than a pre-determined level".

Since the combination of Schunk and Shaffer fails to disclose all of the limitations of independent claim 1, the Applicant respectfully submits that the combination of these references fails to establish a *prima facie* case of obviousness as per §706.02(j) and §2142 of the MPEP[2]. As such, the Examiner is respectfully requested to withdraw the rejection of dependent claim18.

[2] For the Examiner to establish a *prima facie* case of obviousness, three criteria must be considered: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge

Claims 23-25 and 28

Claims 23-25 and 28 depend from independent claim 20, and as such incorporate by reference all the limitations contained therein, including the limitation which has been shown above to be absent from Schunk and Shaffer. Accordingly, for the same reasons as those presented above with respect to claim 18, the Examiner is respectfully requested to withdraw the rejection of dependent claims 23-25 and 28.

C. NON-ART REJECTIONS

On page 4 of the Office Action, under the rubric of the aforesaid rejection under 35 USC 102(e), the Examiner has objected to the usage of the word "adapted" in claims 13, 20 and 22 as "not being a positive recitation of the limitation of the processing resource/resource manager". The Applicant respectfully disagrees but has nevertheless amended claims 13, 20 and 22 in the interest of furthering prosecution. Specifically, the Applicant has replaced "adapted" with "configured". Claims 13, 20 and 22 are now considered to be in condition for allowance.

---

generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings, (2) there must be a reasonable expectation of success, and (3) the prior art references must teach or suggest all of the claim limitations. MPEP §§ 706.02(j), 2142 (8th ed.).

III. CONCLUSION

In view of the above, it is respectfully submitted that claims 1, 3, 4, 6, 8-20 and 22-31 are in condition for allowance. Reconsideration of the rejections and objections is requested. Allowance of claims 1, 3, 4, 6, 8-20 and 22-31 at an early date is solicited.

If the claims of the application are not considered to be in full condition for allowance, for any reason, the Applicant respectfully requests the constructive assistance and suggestions of the Examiner in drafting one or more acceptable claims or in making constructive suggestions so that the application can be placed in allowable condition as soon as possible and without the need for further proceedings.

Respectfully submitted,

Ralph A. Dowell
Reg. No. 26,868
Agent for the Applicants

Date: 11/24/2006

DOWELL & DOWELL, P.C.
2111 Eisenhower Ave.
Suite 406
Alexandria, VA 22314
USA
Telephone: (703) 415-2555
Facsimile: (703) 415-2559